

Exhibit D

~~Highly Confidential - Heather Shoven~~

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 _____)
5) Civil Action No.
6 In re: FLINT WATER CASES) 5:16-cv-10444-JEL-MKM
7) (consolidated)
8) Hon. Judith E. Levy
9)
10)

11 HIGHLY CONFIDENTIAL

12 Thursday, September 15, 2022

13
14 Remote videotaped deposition of
15 HEATHER SHOVEN, commencing at 8:59 a.m., on the above
16 date, before Carol A. Kirk, Registered Merit Reporter,
17 Certified Shorthand Reporter, and Notary Public.
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18 On behalf of McLaren Regional Medical Center:

22

24

1 R E M O T E A P P E A R A N C E S (Cont'd)

2 - - -

3 On behalf of the United States of America:

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10 Also Present:

11 Brian McGee, Videographer
12 Dan Eagles, USDOJ

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1 Q. What were your -- could you just
2 describe for us your duties and responsibilities
3 as the enforcement team leader for the Ground
4 Water and Drinking Water branch at Region 5 from
5 October of 2011 through April of 2018.

6 A. Of course I can.

7 I was the lead for the enforcement
8 targeting tool, the ETT, analysis for the
9 Region 5 water systems. Region 5 at the time I
10 was there -- I know things -- so you know, all
11 my water experience, 2021 is my last, you know,
12 time with that.

13 And so at that time, we had 42,000
14 water systems that we oversaw in Region 5. 110
15 were tribal. All the rest were overseen by the
16 primacy states, the six primacy states within
17 the region.

18 Q. And the EPA is divided into ten
19 regional offices, correct?

20 A. Correct. Correct.

21 Q. And each regional office is
22 responsible for the execution of the public
23 drinking water programs within its geographical
24 territory, correct?

1 need to be done to correct them. And the
2 important thing is that the public is notified
3 and knows of the risks.

4 So I would say that her job at
5 that time, the Water Division director, should
6 always be to ensure that we have strong state
7 programs. And every year that person would have
8 to sign that there was proper operator
9 certification and capacity development in place.
10 And you would also transmit an end-of-year
11 evaluation report. So that is what I can say
12 the director is in charge of and has the
13 authority to issue violations.

14 So my experience as the
15 enforcement team leader, if I had a notice of
16 violation for a system or an administrative
17 order -- I had one referral to DOJ in my time --
18 those were delegated higher up.

19 So I could see a violation that I
20 wanted to have a notification, but the authority
21 to do that was with Tinka Hyde and people
22 higher.

23 Q. And your job duties and
24 responsibilities as the enforcement team leader

1 were to ensure that the region's public water
2 systems were complying with federal regulations,
3 correct?

4 MR. WILLIAMS: Objection; asked
5 and answered.

6 Q. You can answer.

7 A. So what I will say here is, of the
8 42,000 water systems, I would look at what rose
9 to the level of concern. If there was a
10 violation that -- you know, if there were
11 violations that didn't hit the priority
12 threshold, I've got a triage.

13 I only had a staff of about five.
14 So I was really concerned by repeat violators
15 and those that were called priority systems.
16 They were above the threshold.

17 So, no, I do not take
18 responsibility for 42,000 systems. I oversaw
19 and identified the ones that I thought needed
20 federal intervention or more information from
21 the state.

22 Q. Which department or division was
23 responsible for overseeing compliance and
24 enforcement of the EPA's regulatory

1 Q. Did Region 5 identify the city's
2 total coliform bacteria violations as any
3 indicator of a problem with Flint's water system
4 at the time?

5 A. If you would look at the number of
6 total coliform violations across the nation,
7 there's no way that U.S. EPA can be concerned of
8 that type of violation, because total coliform
9 is an indicator of possible bacterial
10 contamination.

11 So it is not -- now, E. coli,
12 those also happen, especially in hot summer
13 months. So, again, you know, that is not
14 something that would rise to EPA. I think we
15 became aware of it -- I don't know.

16 Jennifer was aware of it, and I
17 think it's because she was in communications
18 with the state about it. But it actually never
19 made it to enforcement level because it was
20 returned to compliance quite quickly, so ...

21 It was not on my radar as ...

22 MR. HOWE: Why don't we go off the
23 record.

24 THE VIDEOGRAPHER: The time is

1 that you learned of the boil water advisory
2 notices in Flint sometime in September 2014?

3 A. Yes. And most -- yeah.

4 Q. Following the city's switch to the
5 Flint River in 2014, at some point did you come
6 to learn that Flint had issued a violation
7 notice to the city regarding an exceedance of
8 the maximum contaminant level standard for total
9 trihalomethanes at certain locations within the
10 city's drinking water distribution system?

11 A. Yes.

12 Q. And do you know approximately when
13 you first learned of that violation?

14 A. Yes. So I actually January of
15 2015 received a call. This was the first
16 complaint that I recall receiving directly from
17 a citizen in the City of Flint. It was an
18 Arthur Woodson. And we had quite a long
19 conversation that I ended up documenting in an
20 e-mail afterwards to Tom Poy and
21 Jennifer Crooks, because, again, I wasn't
22 involved in complaints usually unless it rose to
23 the level.

24 So that discussion -- there's

1 public notice that happens with the TTHM,
2 disinfection byproducts exceedance, and so I
3 made sure that that notice -- that Mr. Woodson
4 was aware of the risks and everything, because
5 if I recall, he was worried about a family
6 member with cancer, and it's a disinfection
7 byproduct, which is cancer causing.

8 And it was a long discussion, and
9 he was talking about the emergency manager
10 situation and the concern about, you know, MDEQ
11 overseeing the city, but there was a state
12 program manager. So we talked about that.

13 But the real focus -- he gave me
14 this background, but the real focus was he
15 wanted to know why isn't EPA taking enforcement.
16 We had some -- you know, the boil water. We've
17 now had this TTHM MCL. Where are you?

18 And I said, you know, "I'm aware
19 of the situation." And I explained to him the
20 enforcement targeting tool in the best lay terms
21 I could. And that would be explaining just the
22 number of systems that we have and how we target
23 our limited resources to the highest priority
24 systems with violations.

1 And I explained to him the
2 follow-up that was occurring with the
3 operational evaluation level for the -- because
4 the Stage 2 Disinfection Byproducts Rule and
5 that things were being looked at to figure out
6 how can we, you know, return to compliance on
7 this violation.

8 And, also, that was when I
9 mentioned to him that it's quite -- it happens
10 often that once you have an E. coli MCL, that an
11 overcorrection can occur with the water system
12 to overdisinfect and possibly get these MCLs.

13 So I was explaining that to him.
14 And then I did, like I say, do a follow-up
15 e-mail.

16 Q. And when do you recall that the
17 TTHM violation notice was issued to the city?

18 A. I think it was in January right
19 before my call. I think he was responding to
20 that. Although, the way that the monitoring
21 would occur, it could have been December,
22 because it's quarterly monitoring, and you do
23 the locational running annual average.

24 So I cannot confirm with you.

1 with them, not really with enforcement yet.

2 That was all Miguel. I was aware of this, but
3 not in the weeds of it at that time.

4 Q. Do you recall whether there was
5 any discussion of the potential widespread lead
6 release due to the City's lack of corrosion
7 control treatment and pre-flushing?

8 A. I know there was a concern for
9 that, but there was no data that could tell us
10 that, because the lead and copper compliance
11 data showed low levels. But, yes, there's that
12 concern. That is our -- that was our whole
13 concern at the beginning; if you don't have
14 corrosion control, there's that risk.

15 Q. And do you recall whether there
16 was any discussion of MDEQ's implementation of
17 the Lead and Copper Rule with respect to
18 corrosion control treatment in Flint and any
19 disagreement that Region 5 had with MDEQ over
20 whether the city needed to maintain corrosion
21 control treatment for Flint?

22 A. Our biggest concern at that time
23 was, first of all, not being told the truth in
24 February. And then a whole year after the

1 has got a job. And then Office of Water, of
2 which OGWDW is below, is making sure that you
3 have safe water and everything is implemented
4 properly, and we're following the Safe Drinking
5 Water Act.

6 Q. And their involvement was
7 necessary for issuances of a 1431 order,
8 correct?

9 A. We don't need headquarters for a
10 1431. We do talk to them, but I think the
11 critical thing here, why he's talking about
12 Ed coming in, OGWDW and OGC, is this whole
13 fundamental disagreement with whether there is a
14 violation or not, the interpretation of the
15 regulation, and that's what headquarters is for,
16 is national consistency.

17 So that's why it was bumped up.
18 Even though we thought we were right, you have
19 state relations, and they needed to have that
20 higher opinion.

21 Q. Okay. And was it Region 5's
22 opinion that the City of Flint had violated the
23 Lead and Copper Rule by not continuing corrosion
24 control treatment in Flint?

1 MR. WILLIAMS: Objection; lack of
2 foundation.

3 Q. You can answer.

4 A. It was the position of Tom Poy,
5 Miguel, Heather, and -- it was our position that
6 there was a treatment technique violation.

7 When you go up to the delegated
8 authority, Tinka Hyde, the division director,
9 she makes that decision. She may make that
10 decision to do a 1414.

11 However, at that time when she
12 looked at it, she's like, "Oh, the state
13 disagrees with the interpretation. It looks
14 like there could be some ambiguity."

15 I have no idea in this point where
16 our regional counsel was, but there -- she saw
17 that maybe there was an ambiguity, a difference
18 of opinion, between her 1256 and the state. She
19 wanted headquarters' opinion. She saw the lead
20 and copper compliance data below 15.

21 So that's where she was. So she
22 came from that perspective. And the staff were
23 at a different place.

24 Q. What about the Office of the

1 Q. And what I want to focus on is the
2 top e-mail from Mr. Del Toral to yourself dated
3 Thursday, September 3, 2015, the subject of
4 which is "Update of Flint Water Study and the
5 use of the orthophosphate."

6 Do you see that?

7 A. I do.

8 Q. And Mr. Del Toral states, "The
9 suggestion to go back to Detroit Water, at least
10 until the KWA pipeline is finished, seems like
11 the best solution for now. It would also give
12 Flint the time to study/learn how to treat the
13 raw water they will be getting from the KWA
14 pipeline since they don't seem to be able to
15 manage treating a raw source right now."

16 Do you see that?

17 A. Yes.

18 Q. Do you know whether this was the
19 first time there was any discussion within
20 Region 5 about whether the best solution for the
21 City of Flint was to return to Detroit Water?

22 A. I can't recall, but I -- we had
23 had a discussion even offline on this before
24 this e-mail, but it is -- we thought that was a

1 good solution. I don't recall when we came up
2 with that.

3 Q. And did Region 5 ultimately make
4 that recommendation to MDEQ and/or the City of
5 Flint?

6 A. Unfortunately, it is not --
7 neither EPA nor MDEQ can tell a public water
8 system what their source should be. Now, the
9 State of Michigan with the emergency manager --
10 interesting. But all that we do is we deal with
11 this is the public water system the community or
12 private group has developed, and these are the
13 regulations. We can't say what the source would
14 be, and we have no control over saying this
15 should be your source.

16 MR. HOWE: I'm going to mark this
17 e-mail exchange as the next exhibit,
18 Exhibit 21.

19 - - -

20 (Shoven Deposition Exhibit 21 marked.)

21 - - -

22 BY MR. HOWE:

23 Q. Ms. Shoven, you mentioned just a
24 few minutes ago a letter or e-mail exchange that

1 I was talking about it seriously with OECA and
2 Region 5 on September 21, 2015.

3 Q. When Dr. --

4 A. Edwards.

5 Q. -- Dr. Edwards reported his
6 results and his concerns over the sampling sites
7 that the city was using for its 90th percentile?

8 A. Right, because the thing that I
9 thought was an indicator of systemwide lead
10 levels was gone. So everything was suspect by
11 that time. And we had the data from the study
12 then, too, that was coming out in August. So
13 things were coming up to, okay, enough is
14 enough.

15 Q. At some point did you learn that
16 the former -- that former Governor Rick Snyder
17 had appointed a task force to conduct an
18 independent review of the Flint water crisis?

19 A. Yes, I do know that they had a
20 task force, and it possibly could have been
21 before our task force was announced. I can't
22 recall. But yes.

23 Q. Were you interviewed by the task
24 force as part of its review?

1 the follow-up was occurring, so you really
2 couldn't hit the prong of the state and locals
3 not acting.

4 Q. You would agree, however, that EPA
5 statutory authority under Section 1431 of the
6 SDWA doesn't require any such notice, correct?

7 A. What is the such notice you speak
8 of?

9 Q. You mentioned under 1414, that
10 1414 notice requires 30 days notice to the state
11 and -- the primacy state and public water
12 authority, correct?

13 A. Oh, okay. So, yeah, notice was
14 used in a couple different ways. So in a -- if
15 I did -- if we did a Section 1414 action, the
16 notice of violation, that tells the system,
17 "Hey, you incurred this violation, treatment
18 technique, this is what you need to do to return
19 to compliance, and then this is notice to the
20 public regarding this violation and the risk
21 with the water."

22 So, like, to get the information
23 out to the public, it would have -- they had 30
24 days to do that. So what I'm trying to say is

1 when I was drafting a notice of violation, that
2 was in the September -- right after
3 September 21, the 10-point plan I think was
4 October 2, so they were already working on
5 notifying the public of the alternate water and
6 those things that a 1414 action would have
7 accomplished.

8 Q. Okay. I just want to make sure I
9 understand your testimony.

10 When I asked you earlier what was
11 the earliest point that you believed that the
12 EPA could have issued an emergency order, were
13 you referring to Section 1414 or Section 1431 of
14 the SDWA?

15 MR. WILLIAMS: Objection;
16 mischaracterizes prior testimony and
17 asked and answered.

18 MR. HOWE: That's why -- I'm
19 asking for clarification.

20 A. Okay. So here's the thing, is
21 both of those authorities are always available
22 to you. So 1414 was the one that I was really
23 focused on for the most part until when you get
24 to the September 20th time frame -- the 1431 is

1 a tool, but here's where the issue is with the
2 1431.

3 So I could -- you know, the notice
4 to the public, the alternate water and the
5 corrective actions. Okay. We see there's --
6 there's most likely a lead problem because of
7 the questionable compliance monitoring that
8 happened, Marc Edwards' data, and LeeAnne
9 Walters, and the lack of corrosion control. We
10 know those things.

11 What can EPA do? Okay. We don't
12 know all of those things until September 21st,
13 okay. So you get in the office September 21st,
14 you know all those things. We had a discussion
15 September 21st. And I think there are probably
16 notes out there, because I was starting to draft
17 a 1414.

18 The reason why -- a 1431 totally
19 there, but a 1431 cannot do what a critical
20 thing for timeliness would be to say switch back
21 to Detroit. That's going to be one way to
22 really help the situation, is switch your water
23 source.

24 All that we could do is say,

1 "Provide alternate water, do the actions to
2 return to compliance, notify the public."

3 So as things were evolving,
4 Susan Hedman makes the decision for 1431. She's
5 having discussions with Wyant. All these
6 discussions I did not know about until I put
7 together the timeline. I'm like, oh, this was
8 happening.

9 So we were feeding information up.
10 They had seen the copy of my notice of
11 violation. The thought was the state was doing
12 enough. We won't focus on the NOV, and, you
13 know, let this play out as they're doing the
14 things to try to get back into compliance.

15 So -- and the NOV would be signed
16 by Tinka who did not want to do an NOV, at least
17 through September 21st, when we found out the
18 compliance data that we were banking on was not
19 accurate. She had another set of things to look
20 at.

21 But in that ten days, between
22 September 21st and October 2nd, I saw in the
23 record that there was a lot of exchanges, and
24 DEQ Director Wyant was much more involved and

1 the state was responding. So that's where the
2 agency was at that time.

3 Q. If the state agency, the MDEQ, is
4 responding, then why was the EPA's emergency
5 administrative order issued in January 2016?

6 A. That is critical because what
7 happens is you're switching back -- they decided
8 to switch the sources, and we had our task force
9 and -- the Flint Task Force. There were so many
10 things that were not in place for that public
11 water system, such as the things you showed
12 earlier, an inventory of their materials for the
13 piping.

14 They had no idea where the lead
15 service lines were. They didn't have a lead
16 sampling site plan. They had a wholly
17 inaccurate total coliform sample site plan and
18 low or nonexistent chlorine residuals.

19 They didn't have the capacity to
20 really operate the water system. And they
21 didn't have water quality parameters. There
22 were so many things that weren't happening
23 that -- you know, these things came to light as
24 we had our task force.

1 We were like, "Wow, these
2 fundamental things aren't covered. We need to
3 get in there and get the state to remedy the way
4 they were implementing the program, and the city
5 needs to get on task."

6 So all the things that you would
7 see in that order are looking at the basic water
8 chemistry, then figuring out the sites, and now
9 we still -- I was on the order until February of
10 2018, and we were still arguing about the Lead
11 and Copper Rule sample site plan and whether
12 they had the capacity to run a water system.

13 So I believe the order was very
14 much needed to get on the right track. Because,
15 yes, maybe you handled the immediate fire, but
16 there were lots of other areas of vulnerability.

17 Q. Okay. I just want to wrap this
18 up.

19 Finding 33 states that "There was
20 and remains no justification for MDEQ not
21 requiring corrosion control treatment for the
22 switch of water source to the Flint River."

23 Do you see that?

24 A. Yes.

1 those discussions.

2 Q. And is it fair to say that with
3 respect to the possible relationship between
4 disinfection of the municipal water supply and
5 the increase in infectious diseases such as
6 Legionnaires' disease, you would defer to the
7 technical experts in the Office of Research and
8 Development?

9 A. Yes, I would.

10 Q. And I'm sorry to jump around. I'm
11 simply trying to move through this efficiently
12 and not duplicate the efforts of others.

13 A. Of course.

14 Q. I understand, Ms. Shoven, from the
15 testimony of some of your colleagues from the
16 EPA Region 5 that you had a role with the file
17 review and enforcement verification process that
18 was conducted in 2016.

19 Do you recall that?

20 A. Oh, yes. Most definitely. And I
21 was a principal member and the lead for the
22 enforcement review.

23 Q. Okay. And could you tell us what
24 your role was in that process, focusing on the

1 reviews conducted in 2016.

2 A. My role was as far as -- it was,
3 you know, coordination with the state, letting
4 them know what records that we wanted to look
5 at. I made sure that we looked at systems that
6 may have enforcement issues. You can only look
7 at a subset.

8 There are, I think, 10,000 water
9 systems in the State of Michigan, and there's no
10 way you can look at all those files with all the
11 regulations. So I think we ended up with 30
12 systems that we looked at.

13 And so I made sure for the
14 enforcement side that I got some with
15 violations, without, what action level
16 exceedance.

17 So I helped assist in selection
18 and then putting together the tools for how I
19 would -- how we would review the data and what
20 we would capture, and also put together -- we
21 interviewed the enforcement staff and looked at
22 their documents, escalation policy, whatnot.
23 And then the writing of the report.

24 Tom Murphy was the lead for the

1 if a violation was not issued?

2 MR. WILLIAMS: Objection; asked
3 and answered.

4 A. For public notice, a violation
5 occurs or a public health emergency. There's a
6 violation that triggers public notice rule
7 requirements.

8 Q. So as I understand it, the EPA
9 would have been precluded from issuing notice to
10 the public because there was no violation?

11 A. EPA -- so public notice provisions
12 in 141.200, the public notification rule, it
13 lists the three different tiers of public notice
14 and what triggers those requirements.

15 EPA -- the primacy agency actually
16 does not issue public notice. It's the public
17 water system that notifies the public. And so
18 EPA doing a public notice where there's a
19 primacy agency, that doesn't really happen, and
20 so we had no reason at that time -- could you
21 remind me what time I'm in? Is it June of 2015
22 you said?

23 Q. Yes.

24 A. Okay. So in June of 2015, as I've

1 stated before, you know, I personally believe
2 there was a treatment technique violation which
3 would have required Tier 2 public notice by the
4 system.

5 However, we didn't know if there
6 was a systemwide lead issue, because, yes, we
7 did have LeeAnne Walters' home, but the
8 compliance monitoring data for lead and copper
9 did not show elevated levels.

10 So what would you notify the
11 public? You didn't have enough information.
12 And so that's why we talked to the state in
13 June, looking at their next set of data, saying,
14 "Hey, we really interpret this regulation that
15 you needed to maintain corrosion control
16 treatment. You think otherwise. We're getting
17 that legal interpretation. But corrosion
18 control treatment is needed and that needs to
19 happen, so ...

20 MR. HOWE: I'm going to mark as
21 the next exhibit, Exhibit 31 [sic], a
22 document entitled R2 Heather Shoven R5
23 interview.

24 - - -

1 CERTIFICATION

2
3 I, Carol A. Kirk, Registered Merit Reporter and
4 Certified Shorthand Reporter, do hereby certify that
5 prior to the commencement of the examination,
6 HEATHER A. SHOVEN, was duly remotely sworn by me to
7 testify to the truth, the whole truth, and nothing but
8 the truth.

9 I DO FURTHER CERTIFY that the foregoing is a
10 verbatim transcript of the testimony as taken
11 stenographically by me at the time, place, and on the
12 date hereinbefore set forth, to the best of my
13 ability.

14 I DO FURTHER CERTIFY that I am neither a
15 relative nor an employee nor attorney nor counsel of
16 any of the parties to this action, and that I am
17 neither a relative nor employee of such attorney or
18 counsel, and that I am not financially interested in
19 the action.

20
21
22 

23 Carol A. Kirk, RMR, CSR
24 Notary Public